

112), section 3 of the Act of October 23, 1962 (76 Stat. 1134) and section 235(c)(1) of the Revenue Act of 1964 (78 Stat. 126).

[T.D. 6886, 31 FR 8685, June 23, 1966]

§ 1.802-3 Tax imposed on life insurance companies.

(a) *In general.* For taxable years beginning after December 31, 1957, section 802(a)(1) imposes a tax on the life insurance company taxable income (as defined in section 802(b) and paragraph (a) of § 1.802-4) of every life insurance company (including a foreign life insurance company carrying on a life insurance business within the United States if with respect to its United States business it would qualify as a life insurance company under section 801(a)). The tax imposed by section 802(a)(1) is payable upon the basis of returns rendered by the life insurance companies liable thereto. See subchapter A, chapter 61 (section 6001 and following) of the Code.

(b) *Tax imposed.* The tax imposed by section 802(a)(1) consists of a normal tax and a surtax computed as provided in section 11 as though the life insurance company taxable income (as defined in section 802(b)) were the taxable income referred to in section 11.

(c) *Normal tax.* The normal tax is computed by applying to the life insurance company taxable income the regular corporate normal tax rate (as in effect for the taxable year) provided by section 11(b).

(d) *Surtax.* The surtax is computed by applying the regular corporate surtax rate (as in effect for the taxable year) provided by section 11(c) to the amount by which the life insurance company taxable income exceeds the surtax exemption for the taxable year as determined under section 11(d). See sections 269 and 1551 and the regulations thereunder, for certain circumstances in which the surtax exemption may be disallowed in whole or in part.

(e) *Special rule for 1959 and 1960.* See section 802(a)(3) and paragraph (a) of § 1.802-5 for a transitional rule applicable in certain cases in determining tax liability for the taxable years 1959 and 1960 by reason of the operation of section 802(b)(3).

(f) *Tax imposed in case of certain capital gains*—(1) *Taxable years beginning after December 31, 1958, and before January 1, 1962.* For taxable years beginning after December 31, 1958, and before January 1, 1962, if the net long-term capital gain (as defined in section 1222(7)) of any life insurance company exceeds its net short-term capital loss (as defined in section 1222(6)), section 802(a)(2) imposes a separate tax equal to 25 percent of such excess. This separate 25 percent tax rate applies whether or not there is life insurance company taxable income, taxable investment income, or a gain or loss from operations for the taxable year. For taxable years beginning after December 31, 1958, and before January 1, 1962, only the excess (if any) of net short-term capital gain (as defined in section 1222(5)) over net long-term capital loss (as defined in section 1222(8)) shall be taken into account in computing taxable investment income and gain or loss from operations. See sections 804(b) and 809(b). Except as modified by section 817 (rules relating to certain gains and losses), the general rules of the Code relating to gains and losses (such as the rules for determining the amount, characterization, and treatment thereof) shall apply with respect to life insurance companies.

(2) *Alternative tax in case of capital gains for taxable years beginning after December 31, 1961.* For taxable years beginning after December 31, 1961, if the net long-term capital gain (as defined in section 1222(7)) of any life insurance company exceeds its net short-term capital loss (as defined in section 1222(6)), section 802(a)(2) imposes an alternative tax in lieu of the tax imposed by section 802(a)(1), if and only if such alternative tax is less than the tax imposed by section 802(a)(1). The alternative tax is the sum of:

(i) A partial tax, computed as provided by section 802(a)(1), on the life insurance company taxable income determined by reducing the taxable investment income, and the gain from operations, by the amount of the excess of its net long-term capital gain over its net short-term capital loss, and

(ii)(a) In the case of a taxable year beginning before January 1, 1970, an

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amount equal to 25 percent of such excess, or

(b) In the case of a taxable year beginning after December 31, 1969, an amount determined as provided in section 1201(a) and paragraph (a)(3) of § 1.1201-1 on such excess.

In the computation of the partial tax, the deductions provided by sections 170 (as modified by section 809(a)(3)), 243, 244, 245 (as modified by sections 804 (a)(5) and 809(d)(8)(B)), and the limitation provided by section 809(f), shall not be recomputed as a result of the reduction of taxable investment income, and gain from operations, by the amount of such excess. Except as modified by section 817 (rules relating to certain gains and losses), the general rules of the Code relating to gains and losses (such as the rules for determining the amount, characterization and treatment thereof) shall apply with respect to life insurance companies.

(g) *Foreign life insurance companies.* Foreign life insurance companies not carrying on an insurance business within the United States are not taxable under section 802, but are taxable as other foreign corporations. See section 881.

(h) *Assessment and collection of tax imposed.* All provisions of the Internal Revenue Code and of the regulations in this part not inconsistent with the specific provisions of sections 801 to 820, inclusive, are applicable to the assessment and collection of the tax imposed by section 802(a), and life insurance companies are subject to the same penalties as are provided in the case of returns and payment of income tax by other corporations. The return shall be on Form 1120L.

(i) *Illustration of principles.* The provisions of section 802(a), other than paragraph (3) thereof, and this section may be illustrated by the following example:

Example. For the taxable year 1959, T, a life insurance company, has life insurance company taxable income of \$300,000 (including \$25,000 of net short-term capital gain) and \$80,000 of net long-term capital gain. The tax of T under section 802(a) for 1959 is \$170,500 (\$90,000 normal tax, \$60,500 surtax, and \$20,000 capital gains tax) computed as follows:

COMPUTATION OF NORMAL TAX	
Life insurance company taxable income	\$300,000

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Normal tax (30% of \$300,000)	90,000
COMPUTATION OF SURTAX	
Life insurance company taxable income	\$300,000
Less: Exemption from surtax	25,000
Excess of life insurance company taxable income subject to surtax	275,000
Surtax (22% of \$275,000)	60,500
COMPUTATION OF CAPITAL GAINS TAX	
Excess of net long-term capital gain over net short-term capital loss	\$80,000
Capital gains tax (25% of \$80,000)	20,000

(j) *Cross reference.* In the case of a taxable year of a life insurance company ending after December 31, 1963, for which an election under section 1562(a)(1) by a controlled group of corporations is effective, the additional tax imposed by section 1562 may apply. See section 1562 and the regulations thereunder.

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§ 1.802-4 Life insurance company taxable income.

(a) *Life insurance company taxable income defined.* Section 802(b) defines the term *life insurance company taxable income*, for purposes of part I, subchapter L, chapter 1 of the Code, as the sum of:

(1) The taxable investment income (as defined in section 804), or, if smaller, the gain from operations (as defined in section 809),

(2) If the gain from operations exceeds the taxable investment income, an amount equal to 50 percent of such excess, plus

(3) The amount subtracted from the policyholders surplus account for the taxable year, as determined under section 815.

If for any taxable year there is a loss from operations (as defined in section 809(b)(2)), the amount taken into account under paragraphs (1) and (2) of section 802(b) and subparagraphs (1) and (2) of this paragraph shall be zero. However, even in such a case, there may still be an amount includible in life insurance company taxable income (and hence an amount subject to tax) by reason of an amount includible under section 802(b)(3) and subparagraph (3) of this paragraph.

(b) *Illustration of principles.* The provisions of section 802(b) and this section